

REMARKS

The Office Action of July 31, 2008, has been received and reviewed.

Claims 1-16 and 18-23 are currently pending and under consideration in the above-referenced application. Each of claims 1-16 and 18-23 has been rejected.

Reconsideration of the above-referenced application is respectfully requested.

Rejections under 35 U.S.C. § 112, First Paragraph

Claims 1-16 and 18-23 are rejected for being drawn to subject matter that assertedly does not comply with the written description requirement of 35 U.S.C. § 112, first paragraph. Specifically, it has been asserted that the specification of the above-referenced application does not provide sufficient support for the phrase “consisting essentially of” in independent claims 1 and 20.

In an effort to advance prosecution of the above-referenced application, the phrase “consisting essentially of” in both independent claim 1 and independent claim 20 has been replaced with “consisting of.” Support for a composition that includes an egg “extract consisting of water soluble proteins of a yolk of an egg” is provided in paragraph [0043] of the as-filed application.

Withdrawal of the 35 U.S.C. § 112, first paragraph, written description rejection of independent claims 1 and 20, and of their dependent claims, is respectfully requested, as is the allowance of each of claims 1-16 and 18-23.

Rejections under 35 U.S.C. § 102

Claims 1-16 and 19-23 have been rejected under 35 U.S.C. § 102(e) for reciting subject matter that is purportedly anticipated by the subject matter described in U.S. Patent Application Publication 2002/0044942A1 of Dopson (hereinafter “Dopson”).

A claim is anticipated only if each and every element, as set forth in the claim, is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053

(Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The indication that the 35 U.S.C. § 102(e) rejection based on Dopson may be overcome by filing an affidavit in accordance with the requirements 37 C.F.R. § 1.131 is gratefully acknowledged. Such an affidavit once all of the other issues remaining in the above-referenced application have been resolved.

Rejections under 35 U.S.C. § 103(a)

Claims 1-16 and 18-22 have been rejected under 35 U.S.C. § 103(a).

There are several requirements in establishing a *prima facie* case of obviousness against the claims of a patent application. All of the limitations of the claim must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Even then, a claim “is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007). The Office must also establish that one of ordinary skill in the art would have had a reasonable expectation of success that the purported modification or combination of reference teachings would have been successful. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). There must also be “an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR* at 1396. That reason must be found in the prior art, common knowledge, or derived from the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006). A mere conclusory statement that one of ordinary skill in the art would have been motivated to combine or modify reference teachings will not suffice. *KSR* at 1396.

Klesius in View of Rozzo

Claims 1, 2, 5, 7, 8, 10-13, 16, and 18-22 are rejected under 35 U.S.C. § 103(a) for being directed to subject matter that is assertedly unpatentable over the teachings of Klesius, P.H., et al., “Adoptive Transfer of Delayed Hypersensitivity and Protective Immunity to *Leishmania*

tenella with Chicken-Derived Transfer Factor,” Poultry Sci., 63:1333-37 (1984) (hereinafter “Klesius”), in view of teachings from Rozzo, S.J., et al. “Purification of Transfer Factors,” Mol. Immunol., 29(2):167-82 (1992) (hereinafter “Rozzo”).

Independent claim 1, as amended herein, is directed to a method that includes “administering... a quantity of a composition including an extract of an egg...” The extract consists of water soluble egg yolk proteins, including transfer factor, having molecular weights of about 8,000 Da or less.

The teachings of Klesius are limited to administration of a transfer factor-containing composition that includes an extract from the spleens of chickens. Klesius, page 1334, first column. The teachings of Rozzo relate to administration of a composition that included affinity purified transfer factor from mice. Rozzo, page 168, first column. Neither of these compositions would include an extract of an egg, with the extract consisting of water soluble egg yolk proteins, including transfer factor, having molecular weights of about 8,000 Da or less. Stated another way, neither the composition of Klesius nor the composition of Rozzo would include any egg-specific, water soluble proteins that are present in an egg yolk and that have molecular weights of about 8,000 Da or less. Therefore, the teachings of Klesius and Rozzo do not support a *prima facie* case of obviousness against amended independent claim 1, or against any of claims 1, 2, 5, 7, 8, 10-13, 16, 18, 19, or 22 depending directly or indirectly from independent claim 1.

Like amended independent claim 1, independent claim 20, as amended herein, is directed to a method that includes “administering... a quantity of a composition including an extract of an egg...” Amended independent claim 20 requires that that extract consist of “water soluble proteins of a yolk of the egg, including transfer factor, that have molecular weights of about 8,000 Da or less.”

Again, neither Klesius nor Rozzo teaches or suggests a method in which an extract of an egg that *includes egg yolk proteins other than transfer factor* is administered to an animal to be treated, let alone an egg extract that consists of water soluble egg yolk proteins having molecular weights of about 8,000 Da or less. Thus, the teachings of Klesius and Rozzo do not support a *prima facie* case of obviousness against amended independent claim 20, as would be required to

maintain the 35 U.S.C. § 103(a) rejection of amended independent claim 20 and its dependent claim 21.

Klesius in view of Rozzo and Kirkpatrick

Claims 3, 4, 6, 9, 14, and 15 have been rejected under 35 U.S.C. § 103(a) for being drawn to subject matter that is purportedly unpatentable over the subject matter taught in Klesius, in view of the teachings of Rozzo and, further, in view of teachings from U.S. Patent 5,840,700 to Kirkpatrick et al. (hereinafter “Kirkpatrick”).

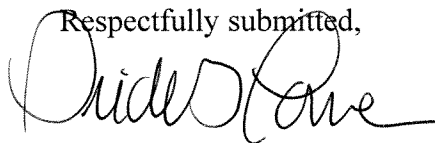
Claims 3, 4, 6, 9, 14, and 15 are allowable, among other reasons, for depending directly or indirectly from independent claim 1, which is allowable. Furthermore, as Kirkpatrick, like Klesius and Rozzo, is devoid of any teaching or suggestion that transfer factor may be present in an extract of an egg, Kirkpatrick does not remedy the aforementioned deficiencies of Klesius and Rozzo. Therefore, the limited teachings of Klesius, Rozzo, and Kirkpatrick do not support a *prima facie* case of obviousness against any of claims 3, 4, 6, 9, 14, or 15.

Withdrawal of the 35 U.S.C. § 103(a) rejections of claims 1-16 and 18-22 is respectfully solicited, as is the allowance of each of these claims.

CONCLUSION

It is respectfully submitted that each of claims 1-16 and 18-23 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brick G. Power", written over the typed name.

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